

Testimony
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Subcommittee on the Federal Workforce and Agency Organization
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Mom, Apple Pie and Working for America: Accountability and Rewards for the Federal Workforce

Working for America Act: A Cautious Perspective Into the Future of the Civil Service

**Statement of
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Chairman Porter, Ranking Member Davis and Members of the House Subcommittee on the Federal Workforce and Agency Organization:

My name is Michael Styles and I am the National President of the Federal Managers Association. On behalf of the approximately 200,000 managers and supervisors in the Federal government whose interests are represented by the Federal Managers Association (FMA), I would like to thank you for inviting us to present our views before this hearing of the House Government Reform Subcommittee on the Federal Workforce and Agency Organization regarding the proposed Working for America Act.

Established in 1913, FMA is the largest and oldest Association of managers and supervisors in the Federal Government. FMA was originally organized within the Department of Defense to represent the interests of civil service managers and supervisors, and has since branched out to include some 35 different Federal departments and agencies. We are a non-profit professional organization dedicated to advocating excellence in public service. As those who will be responsible for the implementation of the proposed changes to the current human capital management systems, managers and supervisors are pivotal in ensuring its success. I submit this written testimony to you on behalf of those managers with respect to the process of developing the regulations, the proposed changes themselves, and the eventual rollout of the new system.

This is truly a historic moment. The employees of America have not seen such attention, diligent focus and commitment to action on proposals that would affect the systems governing their employment in more than a generation. With nearly half the federal workforce already on tap to move into new personnel systems at the Departments of Defense and Homeland Security, we must stress a deliberate and insightful process for drafting and considering the Working for America Act. While decisions will be made by officials in Washington, the men and women overseeing operations in the field will be the ones responsible for successful implementation of the new programs. It would be disadvantageous to

send them a system that does not reflect the proper time and deliberation in assessing the merits and pitfalls in similar systems at DOD and DHS. This careful review could mean a world of difference to a workforce trying to successfully navigate through a new work environment.

The Working for America Act at its core holds considerable merit. The face of America's growing workforce is changing. As a once attractive model for employing the most talented members of the workforce, by today's standards the federal civil service system seems to be unreflective of the expectations of new job seekers. We believe that change needs to take place. The overhaul of the Department of Defense and Department of Homeland Security personnel systems has opened the door to avail the rest of the federal government to a culture of reformation. The current General Schedule pay system and performance review methods are in some cases inadequate. However, certain fundamental principles of merit remain crucial to preserving the integrity and accountability of any new employment system. We have seen through demonstration projects and pilot programs in various agencies around the country over the past few decades that implementing human resources management structures can help improve the productivity and mission of the affected agencies.

As we move forward with any changes to personnel systems, we expect that there will be:

- maintenance of current benefits for active duty and retired employees;
- support for travel and subsistence expenses;
- continuation of current leave and work schedules;
- no loss of pay or position for any current employee;
- no negative changes in current overtime policies and practices; and

- merit principles preventing prohibited personnel practices as well as an adherence to current whistleblower protections and honoring and promoting veterans' preference.

We at FMA recognize that change does not happen overnight. However, we are optimistic that new personnel systems may help bring together the mission and goals of the agencies within a culture of productivity and results. We cannot do it alone. We will need considerable leadership from the top down and collaboration between upper management and employees. It is only through that process that we will be able to realize the potential of the new systems successfulness.

TRAINING AND FUNDING

While we have said it before, we feel it timely to say it again. Two key components to any successful alternative personnel system are training and funding. As any federal employee knows, one of the first items to get cut when budgets are tightened is training. Mr. Chairman, you have indicated your commitment to the importance of training across government. Training of managers and employees on their rights, responsibilities and expectations through a collaborative and transparent process will help to allay concerns and create an environment focused on the mission at hand.

For years, FMA has championed the position that training funds should be fenced off from agencies discretionary spending authority, and we are encouraged by the proposal's inclusion of a provision to protect training dollars to ensure that agencies have resources available to them to prepare for the eventual roll out of any new system. However, we would also like to know that there is some level of accountability for the agency to not only spend those dollars, but spend them correctly. In that vein, we recommend the creation of a position that would oversee the training program, and authorize that person to use the fenced off funds as they deem appropriate.

For any new personnel system in any agency, we must keep in mind that managers will also be reviewed on their performance, and hopefully compensated accordingly. A manager or supervisor cannot effectively assign duties to an employee, track, review and rate performance, and then designate compensation for that employee without proper training. Part of the success for those employees in the demonstration projects and pilot alternative pay systems was the commitment to adequate training and persistent evaluation. The better we equip managers to supervise their workforce, the more likely we are to ensure the accountability of the new system – and the stronger the likelihood that managers will be able to carry out their non-supervisory responsibilities in support of the department's mission.

For employees, they will now be subject to their manager's objective determination of their performance in a much more direct way. Employees would be justified in having concerns about their manager's perception of their work product in any performance review if they felt that the manager was not adequately trained. Conversely, if employees have not been properly trained on their rights, responsibilities and expectations under the new human resources requirements, they are more apt to misunderstand the appraisal process.

Our message is this: As managers and supervisors, we cannot do this alone. Collaboration between manager and employee must be encouraged in order to debunk myths and create the performance and results oriented culture that is intended by the draft legislation. Training is the first step in erasing doubt and opening the door to such a deliberate and massive change in the way the government manages its human capital assets. We need the support of each department's leadership, from the Secretary on down, in stressing that ongoing training across the board is a top priority. We also need the consistent oversight and input of Congress to ensure that both employees and managers are receiving the proper levels of training in order to do their jobs most effectively.

The Executive leadership and Congress must also play a role in proposing and appropriating budgets that reflect these priorities. Agencies must also be

prepared to invest in their employees by offering skill training throughout their career. This prudent commitment, however, will also necessitate significant technological upgrades. OPM has already developed pilot Individual Learning Account (ILA) programs. An ILA is a specified amount of resources such as dollars, hours, learning technology tools, or a combination of the three, that is established for an individual employee to use for his/her learning and development. The ILA is an excellent tool that agencies can utilize to enhance the skills and career development of their employees.

Clearly agency budgets should allow for the appropriate funding of the ILA as an example. However, history has shown that training dollars have been a low priority for many agency budgets. In fact, in the rare event that training funds are available, they are quickly usurped to pay for other agency “priorities.” Toward this end, we at FMA support including a separate line item on training in agency budgets to allow Congress to better identify the allocation of training funds each year.

Neither the Office of Management and Budget (OMB) nor OPM collects information on agency training budgets and activities. This has only served to further diminish the minimal and almost cursory attention on training matters. Many agencies do not even have dedicated employee “training” budgets. Training funds are often dispersed through other accounts. It is no surprise that budget cuts inevitably target training funds, which is why FMA continues to advocate for the establishment of a training officer position within each Federal agency. This would allow for better management and recognition of training needs and resources, in addition to placing increased emphasis on critical training concerns.

The Federal government must, once and for all, take the issue of continuous learning seriously. FMA advocated for the existing Chief Human Capital Officers Council, which the leadership in this Committee was instrumental in bringing about as part of the Homeland Security Act of 2002. While we applaud the Council’s creation of two needed subcommittees to examine performance management as well as leadership development and succession planning, we would urge the

Council to add another subcommittee to evaluate training programs across government. Without proper training, and funding for training, we cannot hope to effectuate expansive human resources changes and fully achieve them.

CHANGING THE PAY AND REVIEW SYSTEM

At the center of the Working for America Act is a move away from the current General Schedule pay system. The most notable alternative pay structure that our membership has had experience with – through demonstration projects and agency reform efforts – is a pay-for-performance model of compensation. We believe that the hardest working employees should be rewarded with the highest rate of pay, and those employees who fall below the curve on their overall performance should not be rewarded at the same rate. The link between performance and pay provides greater incentive to employees that their efforts will be appropriately recognized. For where is the incentive in doing a better job than your colleague when little is done to differentiate additional efforts?

Under the current system, there are rewards available to high performing employees that distinguish their performance. However, as could be the case with any alternative personnel system, the resources available to managers and supervisors to reward those employees are limited, which in turn renders them nearly ineffective. The move into an alternative pay system must be a deliberate process that takes into account past failures and makes systematic changes to prevent history from repeating itself. The move must also take into account both an internal and independent review mechanism for the implementation of a pay-for-performance system within the agency and elsewhere in the Federal government.

The current pay systems being used at the Navy's NAVAIR China Lake, Ca. facility and the Keyport Naval Warfare Center in Keyport, Wa. are two demonstration projects that represent good examples of what to expect in alternative personnel systems. China Lake has been a demonstration project for more than 20 years, whereas Keyport Naval Warfare Center has only been in a

demonstration project for five years. According to data provided by the Human Resources division of the China Lake facility, 70 percent of the employees surveyed approve of the overall project.

However, as we have stated in previous testimony, of major importance to the implementation of any pay-for-performance system is ensuring that an adequate pool of funds is available to the supervisor to recognize the efforts of his/her employee. As it stands, agency budgets feel the pinch from cuts not only due to unforeseen events such as Hurricanes Katrina and Rita, which can effectively drain the availability of funds to support the rewards pool, but also by a growing budget deficit fueled by the War in Iraq and other financial commitments. If this pool of money is lacking, the performance of some deserving federal employees may go unrecognized, causing the new system to fail in meeting its objective, in addition to creating dissension in the workplace.

In short, the integrity of “pay-for-performance” will be severely hindered if all high performers are not rewarded accordingly. We believe that any new personnel system should continue to allocate at least the annual average pay raise that is authorized and appropriated by Congress for General Schedule employees to those employees under the new system who are “fully successful” (or the equivalent rating), in addition to other merit-based rewards based on “outstanding” performance (or equivalent rating).

The performance appraisal process is key to this new personnel system. The review determines the employee’s pay raise, promotion, demotion or dismissal in a far more uninhibited way than is currently established in the General Schedule. We support the premise of holding federal employees accountable for performing their jobs effectively and efficiently. More specifically, the removal of a pass/fail performance rating system that does not allow for meaningful distinction of productivity is a step in the right direction.

We are concerned, however, that within any review system there must be a uniform approach that takes into account the clear goals and expectations of an employee and a system that accurately measures the performance of that

employee, with as little subjectivity on the manager's part as possible. According to our members at Keyport, the managers were provided an initial 20 hours of onsite, in-person training, and employees were provided four hours of training highlighting their responsibilities, duties and expectations. This level of training was a good start. However, ongoing and in-depth training for managers and employees is critical to the overall success and implementation of any new system.

Training helps alleviate concerns of bias. It is essential that within any alternative review process, the methodology for assessment is objective in order to reduce the negative effects of an overly critical or overly lenient manager. The most important component in ensuring a uniform and accepted approach is proper training and funding thereof, that will generate performance reviews reflective of employee performance. We would like to submit the following necessary elements for executing a pay-for-performance system that has a chance to succeed:

- adequate funding of "performance funds" for managers to appropriately reward employees based on performance;
- development of a performance rating system that reflects the mission of the agency, the overall goals of the agency, and the individual goals of the employee, while removing as much bias from the review process as possible;
- a transparent process that holds both the employee being reviewed and the manager making the decision accountable for performance as well as pay linked to that performance; and
- a well-conceived training program that includes skills training and is funded properly and reviewed by an independent body (we recommend the Government Accountability Office as an auditor) which clearly lays out the expectations and guidelines for both managers and employees regarding the performance appraisal process.

We believe that *transparency* leads to *transportability*, as intra- and inter-Department job transfers could be complicated by the lack of a consistent and

uniform methodology for performance reviews. While we need training and training dollars, we should allocate those funds towards a program that takes into account the various functions and missions within the overall mission of the departments. If we are to empower managers with the responsibility and accountability of making challenging performance-based decisions, we must arm them with the tools to do so successfully. Without proper funding of “performance funds” and training, we will be back where we started – with a fiscally restricted HR system that handcuffs managers and encourages them to distribute limited dollars in an inequitable fashion.

Pay banding is not a new concept to the private- and public-sector. It is currently underway in a few government agencies, notably in the Federal Aviation Administration as well as in the Internal Revenue Service – where FMA has a large number of members. The job classification and pay system was developed in the late 1980s, and has seen varying levels of success across private industry and in the public sector.

First and foremost, we cannot stress enough the importance of offering market based pay in reforming any current pay structure. An incentive for working for the federal government is the stability in employment, compensation and benefits. Despite the best intentions of the Federal Employee Pay Comparability Act of 1990, there still remains a considerable pay gap of 32 percent according to the recent numbers from the Bureau of Labor Statistics (BLS) that indicate market forces are not at work in federal employment. We concede that some federal jobs might pay employees higher salaries as compared to the private sector, but from the BLS data, it is also clear that there exists a far greater disparity in wages for the underpaid in federal service.

According to a survey of college graduates, Federal and non-Federal employees conducted by the Partnership for Public Service¹, the Federal government is not considered an employer of choice for the majority of graduating

college seniors. In the survey, nearly 90 percent said that offering salaries more competitive with those paid by the private sector would be an “effective” way to improve Federal recruitment. Eighty-one percent of college graduates said higher pay would be “very effective” in getting people to seek Federal employment. When Federal employees were asked to rank the effectiveness of 20 proposals for attracting talented people to government, the second-most popular choice was offering more competitive salaries (92 percent). The public sector simply has not been able to compete with private companies to secure the talents of top-notch workers because of cash-strapped agency budgets and an unwillingness to address pay comparability issues.

By shifting to a compensation model that looks at the local and national job markets for the pay range of a given position, the federal government makes themselves a more competitive employer. In certain fields, particularly higher paying professions such as law, medicine, science and engineering, market-based pay will allow for the federal government to offer prospective employees attractive recruitment packages that would include benefits such as \$60,000 towards student loan repayments and hiring bonuses as already authorized by Congress. It is the coalescing of all these factors that will allow the government to maintain a top-notch, results-oriented workforce that rivals any other in the world.

Pay banding offers considerable benefits to managers and supervisors that otherwise were unavailable under the rigid GS pay and job classification system. Without the tedious task of having to obtain laborious job descriptions, managers have the flexibility to move employees into better positions and higher-paying salaries without as much red tape. This frees the supervisor up to accomplish his or her day-to-day tasks, while providing more incentive and motivation to the employee. Employees are given a broader range of options to explore various job functions that will demonstrate greater ability and more closely align their work to their compensation.

¹ Survey conducted by Hart-Teeter for the Partnership for Public Service and the Council for Excellence in Government, Oct. 23, 2001, p. 1-3.

While the exact determination of the pay range for each pay band varies, we believe that predicated any alternative system on the current GS salary structure acts as a fair baseline for moving an employee into the new band. It is also important to create a system that is familiar to the employee and manager while still enabling the change that is needed to help ease all parties through the process further. Along those lines, it would be a disservice to recruitment and specifically retention efforts to reduce any employee or manager's pay, and in fact qualified employees should be able to receive higher salaries from this transition. The GS system has been in existence for decades, and moving into a new pay-banding system in and of itself creates some consternation. Using the base salaries of the GS system as the foundation will allay concerns that pay rates will be significantly reduced.

The General Schedule places its emphasis on longevity, and the new system will place more emphasis on job performance than duration of employment. Pay bands provide the opportunity to have accelerated salary progression for top performers. As in the IRS pay-band system, managers are eligible for a performance bonus each year. Those managers with "Outstanding" summary ratings will receive a mandatory performance bonus, while managers with "Exceed" summary ratings are eligible for performance bonuses.

Pay bands can also be designed to provide a longer look at performance beyond a one-year snapshot. Many occupations have tasks that take considerable lengths of time. Pay bands can be designed to recognize performance beyond one year. Arbitrary grade classifications in the GS system inhibit non-competitive reassignments while broader bands foster non-competitive reassignments. This enhances management flexibility and developmental opportunities.

Of course, there remain challenges with any proposed pay-band system for that matter. First, pay-for-performance systems are only as good as the appraisal systems they use. Since performance is the determining factor in pay-band

movement, if there is no confidence in the appraisal system, there will be no buy-in for the pay system.

Another considerable drawback to moving current GS employees into a pay banding system is that some workers will enter at the top of the band. This leaves little room for increase in the base pay of an employee. While they are still eligible for bonuses, the overall base pay goes towards final calculation of their retirement annuities, and could end up having a negative impact on their expected payout, even if they are performing well and receiving comparable bonuses. The idea behind pay bands is to give supervisors greater flexibility in increasing the pay of high-performing employees with the potential for moving up higher in the pay band than in the GS system. If you hamstring them from the beginning from being able to offer that incentive, you are crippling a system that is supposed to be designed to both encourage and reward results.

Closing the pay gap between public and private-sector salaries is critical if we are to successfully recruit and retain the “best and brightest.” In this regard, we are pleased to see a shift in the determination of “locality” pay from strictly geographical to market based. Locality pay adjustments based on regions across the country did not take into account the technical skills needed for a given occupation. The new regulations allow for a look nationwide at a given occupation within the labor market that more accurately ties the rate of pay to job function, which could overcome geographic impediments in the past in closing the gap between public- and private-sector salaries.

MERIT SYSTEMS PROTECTION AND THE EEOC PROCESS

Under the draft legislation, fewer changes are made to the appeals processes for employees and managers to address adverse actions, labor relations, and other grievances. We support the decision by the authors to preserve the Merit Systems Protection Board as well as the majority of collective

bargaining rights. FMA supports an open and fair labor-relations process that protects the rights of employees and creates a work environment that allows employees and managers to do their jobs without fear of retaliation or abuse.

There has also been a commitment on the part of the Office of Personnel Management, DHS and DOD to hold close the Merit System Principles as they undergo their reformation process. We cannot stress adherence to these timely standards enough for the rest of the federal government agencies under the Working for America Act. For generations they have acted as a protective lining for managers and employees to feel confident that their employer is accountable for any misdirected actions taken. Further, they provide a foundation of ideals that should be upheld by all employers that wish to create a results oriented culture that promotes creative thinking and rewards exceptional productivity. They are timeless standards that should remain the bricks and mortar of any alternative personnel system introduced to govern federal service.

The importance of having a place for employees to address their grievances to an objective and independent body is of the utmost importance in maintaining a legitimate and fair process for both the employee and the manager. However, the current process for an employee to file an Equal Employment Opportunity Commission complaint is flawed. According to the EEOC's published report on the Federal Workforce, the agency met the timeline of 180 day review process for complaints 60 percent of the time in 2003. It went on to say, "Overall, agencies failed to meet timeliness requirements for completing complaint investigations." On average, it takes an agency 267 days to complete an investigation. Moreover, only two percent of claims filed are found to be meritorious.²

The bottom line is that a filtering process needs to be put into place that allows legitimate claims to be brought forth and frivolous claims to be dealt with as such. It is not fair for the employee who has been discriminated against to remain

² Annual Report of the Federal Workforce Fiscal Year 2003, U.S. Equal Employment Opportunity Commission Office of Federal Operations

in their hostile position for nearly a year, nor is it acceptable for a manager to be passed over for promotions and raises due to a false claim. While the overall number of complaints has decreased in the last few years, disrupting the workforce and bringing about change without paying proper attention to inclusion, collaboration, providing necessary resources, and instilling confidence in the employees the claims are likely to increase as employees feel they have little recourse for their grievances. Something must be done to address this glaring problem.

RECOGNIZING MANAGEMENT ORGANIZATIONS

The recognition of management organizations such as FMA is a fundamental part of maintaining a collaborative and congenial work environment. Of the provisions in Title 5 that would be waived under the Working for America Act, the retention of the majority of collective bargaining rights does not guarantee that managers and supervisors that are members of the Federal Managers Association are recognized by the employing agency.

Title 5 CFR 251/252 grants non-union employee groups the formal recognition of their Department by ensuring a regular dialogue between agency leadership and management organizations. Specifically, these provisions stipulate that:

- such organizations can provide information, views, and services which will contribute to improved agency operations, personnel management, and employee effectiveness;
- as part of agency management, supervisors and managers should be included in the decision-making process and notified of executive-level decisions on a timely basis;
- each agency must establish and maintain a system for intra-management communication and consultation with its supervisors and managers;

- agencies must establish consultative relationships with associations whose membership is primarily composed of Federal supervisory and/or managerial personnel, provided that such associations are not affiliated with any labor organization and that they have sufficient agency membership to assure a worthwhile dialogue with executive management; and
- an agency may provide support services to an organization when the agency determines that such action would benefit the agency's programs or would be warranted as a service to employees who are members of the organization and complies with applicable statutes and regulations.

In summary, Title 5 CFR 251/252 allows FMA, as an example, to come to the table with Executive Branch leadership and discuss issues that affect managers, supervisors, and executives. While this process is not binding arbitration, the ability for managers and supervisors to have a voice in the policy development within each agency is crucial to long-term vitality. Such consultation should be supported by all agencies and departments, thus we strongly urge the inclusion of CFR 251/252 into the final regulations in order to maintain the strong tradition of a collaborative work environment that values the input of Federal managers.

CONCLUSION

With so many varied demonstration projects and pilot personnel systems having been underway throughout the federal government for years, it makes sense that Congress and the Administration want to move forward with design and implementation of personnel reforms across the entire government. Change for changes sake is not what we are after. We believe the most successful agency reforms must take into account the overall mission of the organization and are guided by the overarching principles of transportability, objectivity and transparency. The ultimate goal is to create the most efficient organization.

A shift in the culture of any organization cannot come without an integral design and implementation process that brings together the managers responsible for implementing the new personnel system and the employees they supervise. A total overhaul of the GS pay system to reflect a more modern approach to market and performance-based pay must be funded properly and must train managers and employees adequately in order for it to succeed. As we have explained, the lack of proper funding for “pay for performance” will work contrary to its intent. Ensuring that employees feel their rights are protected and safeguards are in place to prevent abuse or adverse actions necessitates a strict adherence to Merit Systems Principles. Additionally, all parties would benefit from a revision of the current EEO process.

There are many challenges ahead, but we at FMA cannot stress enough the need to take a cautious and deliberate path for designing and implementing the Working for America Act. We recommend continued collaboration with management and employee groups as well as independent review and auditing by the Government Accountability Office, with the oversight of Congress. Through these checks and balances, we are hopeful that a set of guiding principles will emerge to assist agencies in their expected personnel reform efforts. Thank you again, Mr. Chairman, for the opportunity to testify before your committee and for your time and attention to this important matter. Should you need any additional feedback or questions, we would be glad to offer our assistance.